

110TH CONGRESS
2D SESSION

H. R. 7061

To approve the United States-India Agreement for Cooperation on Peaceful
Uses of Nuclear Energy, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2008

Mr. BERMAN (for himself, Mr. ACKERMAN, and Mr. FALEOMAVAEGA) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To approve the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “United States-India Nuclear Cooperation Approval and
6 Nonproliferation Enhancement Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Definitions.

TITLE I—APPROVAL OF UNITED STATES-INDIA AGREEMENT FOR
COOPERATION ON PEACEFUL USES OF NUCLEAR ENERGY

Sec. 101. Approval of Agreement.

Sec. 102. Declarations of policy; certification requirement; rule of construction.

Sec. 103. Additional Protocol between India and the IAEA.

Sec. 104. Implementation of Safeguards Agreement between India and the
IAEA.

Sec. 105. Modified reporting to Congress.

TITLE II—STRENGTHENING UNITED STATES NONPROLIFERA-
TION LAW RELATING TO PEACEFUL NUCLEAR COOPERATION

Sec. 201. Procedures regarding a subsequent arrangement on reprocessing.

Sec. 202. Initiatives and negotiations relating to agreements for peaceful nu-
clear cooperation.

Sec. 203. Actions required for resumption of peaceful nuclear cooperation.

Sec. 204. United States Government policy at the Nuclear Suppliers Group to
strengthen the international nuclear nonproliferation regime.

Sec. 205. Conforming amendments.

1 SEC. 2. DEFINITIONS.

2 For purposes of this Act, the following definitions
3 apply:

4 (1) AGREEMENT.—The term “United States-
5 India Agreement for Cooperation on Peaceful Uses
6 of Nuclear Energy” or “Agreement” means the
7 Agreement for Cooperation Between the Government
8 of the United States of America and the Govern-
9 ment of India Concerning Peaceful Uses of Nuclear
10 Energy that was transmitted to Congress by the
11 President on September 10, 2008.

12 (2) APPROPRIATE CONGRESSIONAL COMMIT-
13 TEES.—The term “appropriate congressional com-
14 mittees” means the Committee on Foreign Affairs of

1 the House of Representatives and the Committee on
2 Foreign Relations of the Senate.

3 **TITLE I—APPROVAL OF UNITED**
4 **STATES-INDIA AGREEMENT**
5 **FOR COOPERATION ON**
6 **PEACEFUL USES OF NUCLEAR**
7 **ENERGY**

8 **SEC. 101. APPROVAL OF AGREEMENT.**

9 (a) IN GENERAL.—Notwithstanding the provisions
10 for congressional consideration and approval of a proposed
11 agreement for cooperation in section 123 b. and d. of the
12 Atomic Energy Act of 1954 (42 U.S.C. 2153 (b) and (d)),
13 Congress hereby approves the United States-India Agree-
14 ment for Cooperation on Peaceful Uses of Nuclear En-
15 ergy, subject to subsection (b).

16 (b) APPLICABILITY OF ATOMIC ENERGY ACT OF
17 1954, HYDE ACT, AND OTHER PROVISIONS OF LAW.—
18 The Agreement shall be subject to the provisions of the
19 Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), the
20 Henry J. Hyde United States-India Peaceful Atomic En-
21 ergy Cooperation Act of 2006 (22 U.S.C. 8001 et. seq;
22 Public Law 109–401), and any other applicable United
23 States law as if the Agreement had been approved pursu-
24 ant to the provisions for congressional consideration and

1 approval of a proposed agreement for cooperation in sec-
 2 tion 123 b. and d. of the Atomic Energy Act of 1954.

3 (c) SUNSET OF EXEMPTION AUTHORITY UNDER
 4 HYDE ACT.—Section 104(f) of the Henry J. Hyde United
 5 States-India Peaceful Atomic Energy Cooperation Act of
 6 2006 (22 U.S.C. 8003(f)) is amended by striking “the en-
 7 actment of” and all that follows through “agreement” and
 8 inserting “the date of the enactment of the United States-
 9 India Nuclear Cooperation Approval and Nonproliferation
 10 Enhancement Act”.

11 **SEC. 102. DECLARATIONS OF POLICY; CERTIFICATION RE-**
 12 **QUIREMENT; RULE OF CONSTRUCTION.**

13 (a) DECLARATIONS OF POLICY RELATING TO MEAN-
 14 ING AND LEGAL EFFECT OF AGREEMENT.—Congress de-
 15 clares that it is the understanding of the United States
 16 that the provisions of the United States-India Agreement
 17 for Cooperation on Peaceful Uses of Nuclear Energy have
 18 the meanings conveyed in the authoritative representa-
 19 tions provided by the President and his representatives to
 20 the Congress and its committees prior to September 20,
 21 2008, regarding the meaning and legal effect of the Agree-
 22 ment.

23 (b) DECLARATIONS OF POLICY RELATING TO TRANS-
 24 FER OF NUCLEAR EQUIPMENT, MATERIALS, AND TECH-

1 NOLOGY TO INDIA.—Congress makes the following dec-
2 larations of policy:

3 (1) Pursuant to section 103(a)(6) of the Henry
4 J. Hyde United States-India Peaceful Atomic En-
5 ergy Cooperation Act of 2006 (22 U.S.C.
6 8002(a)(6)), in the event that nuclear transfers to
7 India are suspended or terminated pursuant to title
8 I of such Act (22 U.S.C. 8001 et seq.), the Atomic
9 Energy Act of 1954 (42 U.S.C. 2011 et seq.), or
10 any other United States law, it is the policy of the
11 United States to seek to prevent the transfer to
12 India of nuclear equipment, materials, or technology
13 from other participating governments in the Nuclear
14 Suppliers Group (NSG) or from any other source.

15 (2) Pursuant to section 103(b)(10) of the
16 Henry J. Hyde United States-India Peaceful Atomic
17 Energy Cooperation Act of 2006 (22 U.S.C.
18 8002(b)(10)), any nuclear power reactor fuel reserve
19 provided to the Government of India for use in safe-
20 guarded civilian nuclear facilities should be commen-
21 surate with reasonable reactor operating require-
22 ments.

23 (c) CERTIFICATION REQUIREMENT.—Before ex-
24 changing diplomatic notes pursuant to Article 16(1) of the
25 Agreement, the President shall certify to Congress that

1 entry into force and implementation of the Agreement
2 pursuant to its terms is consistent with the obligation of
3 the United States under the Treaty on the Non-Prolifera-
4 tion of Nuclear Weapons, done at Washington, London,
5 and Moscow July 1, 1968, and entered into force March
6 5, 1970 (commonly known as the “Nuclear Non-Prolifera-
7 tion Treaty”), not in any way to assist, encourage, or in-
8 duce India to manufacture or otherwise acquire nuclear
9 weapons or other nuclear explosive devices.

10 (d) RULE OF CONSTRUCTION.—Nothing in the
11 Agreement shall be construed to supersede the legal re-
12 quirements of the Henry J. Hyde United States-India
13 Peaceful Atomic Energy Cooperation Act of 2006 or the
14 Atomic Energy Act of 1954.

15 **SEC. 103. ADDITIONAL PROTOCOL BETWEEN INDIA AND**
16 **THE IAEA.**

17 (a) IN GENERAL.—Congress urges the Government
18 of India to sign and adhere to an Additional Protocol with
19 the International Atomic Energy Agency (IAEA), con-
20 sistent with IAEA principles, practices, and policies, at the
21 earliest possible date.

22 (b) DEFINITION.—In this section, the term “Addi-
23 tional Protocol” has the meaning given the term in section
24 110(1) of the Henry J. Hyde United States-India Peaceful

1 Atomic Energy Cooperation Act of 2006 (22 U.S.C.
2 8008(1)).

3 **SEC. 104. IMPLEMENTATION OF SAFEGUARDS AGREEMENT**
4 **BETWEEN INDIA AND THE IAEA.**

5 Licenses may be issued by the Nuclear Regulatory
6 Commission for transfers pursuant to the Agreement only
7 after the President determines and certifies to Congress
8 that—

9 (1) the Agreement Between the Government of
10 India and the International Atomic Energy Agency
11 for the Application of Safeguards to Civilian Nuclear
12 Facilities, as approved by the Board of Governors of
13 the International Atomic Energy Agency on August
14 1, 2008 (the “Safeguards Agreement”), has entered
15 into force; and

16 (2) the Government of India has filed a declara-
17 tion of facilities pursuant to paragraph 13 of the
18 Safeguards Agreement that is not materially incon-
19 sistent with the facilities and schedule described in
20 paragraph (14) of the separation plan presented in
21 the national parliament of India on May 11, 2006,
22 taking into account the later initiation of safeguards
23 than was anticipated in the separation plan.

1 **SEC. 105. MODIFIED REPORTING TO CONGRESS.**

2 (a) INFORMATION ON NUCLEAR ACTIVITIES OF
3 INDIA.—Subsection (g)(1) of section 104 of the Henry J.
4 Hyde United States-India Peaceful Atomic Energy Co-
5 operation Act of 2006 (22 U.S.C. 8003) is amended—

6 (1) by redesignating subparagraphs (B), (C),
7 and (D) as subparagraphs (C), (D), and (E), respec-
8 tively; and

9 (2) by inserting after subparagraph (A) the fol-
10 lowing new subparagraph:

11 “(B) any material inconsistencies between
12 the content or timeliness of notifications by the
13 Government of India pursuant to paragraph
14 14(a) of the Safeguards Agreement and the fa-
15 cilities and schedule described in paragraph
16 (14) of the separation plan presented in the na-
17 tional parliament of India on May 11, 2006,
18 taking into account the later initiation of safe-
19 guards than was anticipated in the separation
20 plan;”.

21 (b) IMPLEMENTATION AND COMPLIANCE REPORT.—
22 Subsection (g)(2) of such section is amended—

23 (1) in subparagraph (K)(iv), by striking “and”
24 at the end;

25 (2) in subparagraph (L), by striking the period
26 at the end and inserting “; and”; and

1 (3) by adding at the end the following new sub-
2 paragraph:

3 “(M) with respect to the United States-
4 India Agreement for Cooperation on Peaceful
5 Uses of Nuclear Energy (hereinafter in this
6 subparagraph referred to as the ‘Agreement’)
7 approved under section 101(a) of the United
8 States-India Nuclear Cooperation Approval and
9 Nonproliferation Enhancement Act—

10 “(i) a listing of—

11 “(I) all provision of sensitive nu-
12 clear technology to India, and other
13 such information as may be so des-
14 ignated by the United States or India
15 under Article 1(Q); and

16 “(II) all facilities in India noti-
17 fied pursuant to Article 7(1) of the
18 Agreement;

19 “(ii) a description of—

20 “(I) any agreed safeguards or
21 any other form of verification for by-
22 product material decided by mutual
23 agreement pursuant to the terms of
24 Article 1(A) of the Agreement;

1 “(II) research and development
2 undertaken in such areas as may be
3 agreed between the United States and
4 India as detailed in Article 2(2)(a.) of
5 the Agreement;

6 “(III) the civil nuclear coopera-
7 tion activities undertaken under Arti-
8 cle 2(2)(d.) of the Agreement;

9 “(IV) any United States efforts
10 to help India develop a strategic re-
11 serve of nuclear fuel as called for in
12 Article 2(2)(e.) of the Agreement;

13 “(V) any United States efforts to
14 fulfill political commitments made in
15 Article 5(6) of the Agreement;

16 “(VI) any negotiations that have
17 occurred or are ongoing under Article
18 6(iii.) of the Agreement; and

19 “(VII) any transfers beyond the
20 territorial jurisdiction of India pursu-
21 ant to Article 7(2) of the Agreement,
22 including a listing of the receiving
23 country of each such transfer;

24 “(iii) an analysis of—

1 “(I) any instances in which the
2 United States or India requested con-
3 sultations arising from concerns over
4 compliance with the provisions of Ar-
5 ticle 7(1) of the Agreement, and the
6 results of such consultations; and

7 “(II) any matters not otherwise
8 identified in this report that have be-
9 come the subject of consultations pur-
10 suant to Article 13(2) of the Agree-
11 ment, and a statement as to whether
12 such matters were resolved by the end
13 of the reporting period; and

14 “(iv) a statement as to whether—

15 “(I) any consultations are ex-
16 pected to occur under Article 16(5) of
17 the Agreement; and

18 “(II) any enrichment is being
19 carried out pursuant to Article 6 of
20 the Agreement.”.

1 **TITLE II—STRENGTHENING**
2 **UNITED STATES NON-**
3 **PROLIFERATION LAW RELAT-**
4 **ING TO PEACEFUL NUCLEAR**
5 **COOPERATION**

6 **SEC. 201. PROCEDURES REGARDING A SUBSEQUENT AR-**
7 **RANGEMENT ON REPROCESSING.**

8 (a) CONSULTATION.—The President shall keep the
9 appropriate congressional committees fully and currently
10 informed of any discussions or negotiations related to any
11 proposed subsequent arrangement concerning arrange-
12 ments and procedures regarding reprocessing or other al-
13 teration in form or content, as provided for in Article 6
14 of the United States-India Agreement for Cooperation on
15 Peaceful Uses of Nuclear Energy. In particular, the Presi-
16 dent shall inform the appropriate congressional commit-
17 tees at the earliest possible time after a request by the
18 Government of India to initiate discussions or negotiations
19 under Article 6 of the Agreement and shall brief the ap-
20 propriate congressional committees each month on such
21 discussions or negotiations until an arrangement is
22 reached.

23 (b) APPROVAL.—Notwithstanding section 131 of the
24 Atomic Energy Act of 1954 (42 U.S.C. 2160), no pro-
25 posed subsequent arrangement concerning arrangements

1 and procedures regarding reprocessing or other alteration
2 in form or content, as provided for in Article 6 of the
3 Agreement, shall take effect until the requirements speci-
4 fied in subsection (c) are met.

5 (c) REQUIREMENTS.—The requirements referred to
6 in subsection (b) are the following:

7 (1) The President transmits to the appropriate
8 congressional committees a report containing—

9 (A) the reasons for entering into such pro-
10 posed subsequent arrangement;

11 (B) a detailed description, including the
12 text, of such proposed subsequent arrangement;
13 and

14 (C) a certification that the United States
15 will pursue efforts to ensure that any other na-
16 tion that permits India to reprocess or other-
17 wise alter in form or content nuclear material
18 that the nation has transferred to India or nu-
19 clear material and by-product material used in
20 or produced through the use of nuclear mate-
21 rial, non-nuclear material, or equipment that it
22 has transferred to India requires India to do so
23 under similar arrangements and procedures.

24 (2) A period of 30 days of continuous session
25 (as defined by section 130 g.(2) of the Atomic En-

1 ergy Act of 1954 (42 U.S.C. 2159 (g)(2)) has
2 elapsed after transmittal of the report required
3 under paragraph (1).

4 (d) RESOLUTION OF DISAPPROVAL.—Notwith-
5 standing the requirements in subsection (c) having been
6 met, a subsequent arrangement referred to in subsection
7 (b) shall not become effective if during the time specified
8 in subsection (c)(2), Congress adopts, and there is en-
9 acted, a joint resolution stating in substance that Con-
10 gress does not favor such subsequent arrangement. Any
11 such resolution shall be considered pursuant to the proce-
12 dures set forth in section 130 i. of the Atomic Energy Act
13 of 1954 (42 U.S.C. 2159 (i)), as amended by section 205
14 of this Act.

15 **SEC. 202. INITIATIVES AND NEGOTIATIONS RELATING TO**
16 **AGREEMENTS FOR PEACEFUL NUCLEAR CO-**
17 **OPERATION.**

18 Section 123 of the Atomic Energy Act of 1954 (42
19 U.S.C. 2153) is amended by adding at the end the fol-
20 lowing:

21 “e. The President shall keep the Com-
22 mittee on Foreign Affairs of the House of Rep-
23 resentatives and the Committee on Foreign Re-
24 lations of the Senate fully and currently in-
25 formed of any initiative or negotiations relating

1 to a new or amended agreement for peaceful
2 nuclear cooperation pursuant to this section
3 (except an agreement arranged pursuant to sec-
4 tion 91 c., 144 b., 144 c., or 144 d., or an
5 amendment thereto). In carrying out this sub-
6 section, the President shall consult with the
7 Committee on Foreign Affairs of the House of
8 Representatives and the Committee on Foreign
9 Relations of the Senate not less than 15 cal-
10 endar days before each of the following: (1) The
11 President's announcement of any initiative re-
12 lating to such a new or amended agreement. (2)
13 The initiation of any formal or informal nego-
14 tiations relating to such a new or amended
15 agreement. (3) The receipt or transmission of a
16 draft of such a new or amended agreement.”.

17 **SEC. 203. ACTIONS REQUIRED FOR RESUMPTION OF**
18 **PEACEFUL NUCLEAR COOPERATION.**

19 Section 129 a. of the Atomic Energy Act of 1954 (42
20 U.S.C. 2158 (a)) is amended by striking “Congress adopts
21 a concurrent resolution” and inserting “Congress adopts,
22 and there is enacted, a joint resolution”.

1 **SEC. 204. UNITED STATES GOVERNMENT POLICY AT THE**
2 **NUCLEAR SUPPLIERS GROUP TO STRENGTH-**
3 **EN THE INTERNATIONAL NUCLEAR NON-**
4 **PROLIFERATION REGIME.**

5 (a) CERTIFICATION.—Before exchanging diplomatic
6 notes pursuant to Article 16(1) of the Agreement, the
7 President shall certify to the appropriate congressional
8 committees that it is the policy of the United States to
9 work with members of the Nuclear Suppliers Group
10 (NSG), individually and collectively, to agree to further
11 restrict the transfers of equipment and technology related
12 to the enrichment of uranium and reprocessing of spent
13 nuclear fuel.

14 (b) PEACEFUL USE ASSURANCES FOR CERTAIN BY-
15 PRODUCT MATERIAL.—The President shall seek to
16 achieve, by the earliest possible date, either within the
17 NSG or with relevant NSG Participating Governments,
18 the adoption of principles, reporting, and exchanges of in-
19 formation as may be appropriate to assure peaceful use
20 and accounting of by-product material in a manner that
21 is substantially equivalent to the relevant provisions of the
22 Agreement.

23 (c) REPORT.—

24 (1) IN GENERAL.—Not later than six months
25 after the date of the enactment of this Act, and
26 every six months thereafter, the President shall

1 transmit to the appropriate congressional commit-
2 tees a report on efforts by the United States pursu-
3 ant to subsections (a) and (b).

4 (2) TERMINATION.—The requirement to trans-
5 mit the report under paragraph (1) terminates on
6 the date on which the President transmits a report
7 pursuant to such paragraph stating that the objec-
8 tives in subsections (a) and (b) have been achieved.

9 **SEC. 205. CONFORMING AMENDMENTS.**

10 Section 130 i. of the Atomic Energy Act of 1954 (42
11 U.S.C. 2159 (i)) is amended—

12 (1) in paragraph (1), by striking “means a joint
13 resolution” and all that follows through “, with the
14 date” and inserting the following: “means—

15 “(A) for an agreement for cooperation pursuant
16 to section 123 of this Act, a joint resolution, the
17 matter after the resolving clause of which is as fol-
18 lows: ‘That the Congress (does or does not) favor
19 the proposed agreement for cooperation transmitted
20 to the Congress by the President on _____ .’,

21 “(B) for a determination under section 129 of
22 this Act, a joint resolution, the matter after the re-
23 solving clause of which is as follows: ‘That the Con-
24 gress does not favor the determination transmitted

1 to the Congress by the President on _____ .’,
2 or

3 “(C) for a subsequent arrangement under sec-
4 tion 201 of the United States-India Nuclear Co-
5 operation Approval and Nonproliferation Enhance-
6 ment Act, a joint resolution, the matter after the re-
7 solving clause of which is as follows: ‘That the Con-
8 gress does not favor the subsequent arrangement to
9 the Agreement for Cooperation Between the Govern-
10 ment of the United States of America and the Gov-
11 ernment of India Concerning Peaceful Uses of Nu-
12 clear Energy that was transmitted to Congress by
13 the President on September 10, 2008.’,
14 with the date”;

15 (2) in paragraph (2)—

16 (A) in the first sentence—

17 (i) by striking “a proposed agreement
18 for cooperation is submitted to the House
19 of Representatives and the Senate under
20 section 123 d.” and inserting “a proposed
21 agreement for cooperation pursuant to sec-
22 tion 123 d. of this Act, a determination
23 under section 129 of this Act, or a subse-
24 quent arrangement under section 201 of
25 the United States-India Nuclear Coopera-

tion Approval and Nonproliferation Enhancement Act, as the case may be, is submitted to the House of Representatives and the Senate”; and

(ii) by inserting after “such agreement for cooperation” the following “, determination, or subsequent arrangement, as the case may be,”; and

(B) in the second sentence, by inserting after “such an agreement for cooperation” the following “, determination, or subsequent arrangement, as the case may be,”; and

(3) in paragraph (4)—

(A) by inserting after “45 days after its introduction” the following “(or in the case of a joint resolution related to a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, 15 days after its introduction)”; and

(B) by inserting after “45-day period” the following: “(or in the case of a joint resolution related to a subsequent arrangement under section 201 of the United States-India Nuclear Co-

- 1 operation Approval and Nonproliferation En-
- 2 hancement Act, 15-day period)''.

○